IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 955 of 1996

in

SPECIAL CIVIL APPLICATIONNo 5609 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

APP FANIBANDA

Versus

MAHESHCHANDRA A BAROT

Appearance:

MRS KETTY A MEHTA for Petitioner

MR AD OZA for Respondent No. 1

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of decision: 26/12/96

ORAL ORDER: (PER C.K.THAKKER J)

1. This appeal arises out of the order passed by the learned Single Judge in Special Civil Application No. 5609 of 1996 decided on July 31, 1996.

2. Short facts are that for filling up a post of Principal in D.K.Tata High School, Navsari, selection procedure was undertaken. Public advertisement dt. February 17, 1995 was issued and interview was held on March 18, 1995. The Selection Committee selected one Bomi Jagirdar as Principal and an order of appointment was issued on March 18, 1995 appointing Bomi Jagirdar with effect from June 1, 1995. Maheshchandra Atmaram Barot, (respondent herein), who was one of the candidates and was not selected, filed Application No.181 of 1995 in the Gujarat Secondary Education Tribunal, Ahmedabad, challenging process of selection. Bomi Jagirdar, who was selected as Principal also filed Application No. 189 of 1995 in the Tribunal apprehending his termination. The appellant was not a candidate but a trustee. He had not filed any substantial application in the tribunal. He, however, filed an application before the Tribunal in Application No.181 of 1995 raising a preliminary objection that the Tribunal had no jurisdiction to entertain application filed by Mr.Barot and hence the petition was not maintainable. It was contended that since the case did not fall under Sec.38 of the Gujarat Secondary Education Act, 1972, such petition would not lie. A prayer was made to treat the said issue as preliminary issue and to decide at the threshold. The Tribunal vide its order below the said application, rejected it observing therein that objection regarding jurisdiction of the Tribunal would be decided alongwith the main matter. Against that order the appellant filed Spl.C.A.No.5609 of 1996 and as stated above, the learned Single Judge rejected the said petition and confirmed the order passed by the Tribunal. It is against this order that the present petition is filed.

3. Mrs.K.A.Mehta, learned counsel for the appellant contended that the Tribunal has committed an error of law apparent on the face of the record in not granting application filed by the appellant. The same error has been committed by the learned Single Judge. It was argued that when there is inherent lack of jurisdiction in the Tribunal in entertaining the petition, the issue

regarding jurisdiction of Tribunal ought to have been tried as preliminary issue. By ordering the question to be decided at the stage of final hearing of the application, the Tribunal has committed an error of jurisdiction. This is, therefore, a fit case in which writ of prohibition is required to be issued against the Tribunal. It was contended that when the case does not fall within the purview of the Gujarat Secondary Education Act, 1972, the Tribunal ought not to have entertained the application filed by Mr.Barot. It was submitted that almost in similar circumstances Special Civil Application No.2213 of 1996 has admitted by issuing Rule and granting interim relief.

4. Mr.B.P.Tanna, on the other hand supported the order passed by the Tribunal as well as by the learned Single Judge. It was contended that the petition was filed against an interim order passed by the Tribunal and the learned Single Judge decided the matter in exercise of powers under Art.227 of the Constitution of India and hence the Letters Patent Appeal is not maintainable. Even on merits, no error of law muchless an error of law apparent on the face of the record can be said to have been committed by the Tribunal or by the learned Single Judge which requires interference in appeal on the contrary, with a view to support illegal order passed by the Management in favour of respondent no.6, that the present application was filed. It was not expected of the trustee to take stand in favour of one party and to deprive legitimate benefit of the other. Drawing the attention of the court to previous litigation, it was submitted that the order passed by the Tribunal as well as by the learned Single Judge was in consonance with law. A grievance was also made that there was suppression of material facts by the petitioner and the petition as well as Letters Patent Appeal are required to be dismissed on that ground without entering into merits of the matter. Finally, it was submitted that taking into account general principle of law and in particular amendment made in the Order XIV of the Code of Civil Procedure, 1908, in the year 1976 the Tribunal was within its jurisdiction to decide the issue regarding jurisdiction of the Tribunal alongwith the main matter. It cannot be contended that such order is without jurisdiction and a writ of prohibition would lie against the Tribunal.

5. Without expressing final opinion as to whether a Letters Patent Appeal is maintainable, we are of the view that no case has been made out to interfere with the interim order passed by the Tribunal and confirmed by the

learned Single Judge.

6. It is not disputed and cannot be disputed that the appellant is not applicant either in Application No.181 of 1995 or in Application No.189 of 1995 before the Tribunal. He is not a candidate for the post of Head Master. He is merely a trustee. Applications have been filed by the contesting candidates, one by Mr. Maheshchandra Barot who is not selected and according to him, he ought to have been selected for the post of Head Master and the other by Mr.Jagirdar who was selected. It was the case of Mr.Barot that in collusion with each other the management has selected Mr.Jagirdar illegally and unlawfully. On the other hand, Mr.Jagirdar apprehending termination has filed Application No.189 of 1995. The Tribunal has passed order that both the applications would be heard together. It also appears that in past, a petition came to be filed being Special Civil Application No.5561 of 1995 and the learned Single Judge (Coram: M.S.Parikh J.) passed an order on July 12, 1995, relevant part of which reads as under:

> "The learned Tribunal shall proceed to hear both the applications on evidence and dispose them as expeditiously as possible, preferably within a period of three months from the date of receipt of writ of this direction. All the parties to the applications shall cooperate with the trial of both the applications before the learned Tribunal. It is further directed that the matter shall be decided strictly on merits and on appreciation of evidence without being influenced by the interim order. It is finally directed that the appointment of respondent no.1 shall be subject to the fine outcome of the applications before the Tribunal and that fact has been made clear to the respondent No.1 through his learned Advocate appearing on caveat. This order is passed without prejudice to the rights and contentions of all the parties concerned before the Tribunal.
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> Subject to the aforesaid direction petition is rejected. Disposed of accordingly." (Emphasis supplied)

7. It was submitted by Mr.Tanna that no appeal was filed against the above order and it has become final. It is not even the case of the appellant that any appeal was filed against the order passed by the learned Single Judge on July 12, 1995. Now looking to the above order,

it becomes abundantly clear that the learned Single Judge directed the Tribunal to decide the matter "strictly on merits and on appreciation of evidence without being influenced by interim order," impugned in the said petition. The Tribunal, therefore, in our opinion, has not committed any error of law in rejecting application filed by the present appellant, who is not an applicant in any of the two petitions pending before it and when the Tribunal is complying with the direction issued by the learned Single Judge of this court. It is also clear that when the above petition was filed in this court, the present appellant was a party respondent and was also represented by an advocate. No objection whatsoever was raised by his advocate in that petition regarding jurisdiction of the Tribunal. It further appears that another Spl.C.A.No.4710 of 1995 was filed in this court and the following order was passed by the learned Single Judge on 19th June 1995.

> The Tribunal is directed to hear the Applications bearing No. 189/95 and 181/95 without being influenced by either of the orders passed by the Tribunal at the initial stage and strictly on merits. The Tribunal shall hear all the affected parties while deciding the interim relief in both the Applications. If necessary the petitioner as also other parties might be directed to be joined as party respondents in the respective Applications.
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> Nothing further survives in this petition and hence disposed of accordingly. Direct service permitted."

It appears that no Letters Patent Appeal is filed against that order also and the said order stands. Neither in the petition nor in Letters Patent Appeal, any of the above facts have been mentioned by the appellant petitioner. It is seriously contended on behalf of the applicant of Application No. 181 of 1995 (Maheshchandra Barot) that the present petition as well as Letters Patent Appeal has been filed by the present appellant only with a view to deprive him of lawful benefits. A number of circumstances have been pointed out in support of the said submission. We, however, do not express opinion at this stage since the matters are pending before the Tribunal. But we are satisfied that no error of law muchless an error of law apparent on the face of the record has been committed by the Tribunal in rejecting the application filed by the petitioner

appellant. Similarly, the learned Single Judge also has not committed any error and we see no infirmity in the said order.

Regarding Special Civil Application No.2213 of 1996, we are of the view that the admission of the said matter does not carry the case of the appellant further. The facts of that case were entirely different. In that case, an application was filed by the Trust which was rejected and against that order the applicant has approached this court. Again, there was no previous order of this court directing the matter to be heard on merits. In the instant case the applicant who was a party to earlier petition had not raised objection regarding jurisdiction of the Tribunal. This court after hearing the parties including the present appellant, directed the Tribunal to dispose of the application on merits and pursuant to the said order, the Tribunal proceeded with the matter. It, therefore, does not lie in the mouth of the appellant thereafter, without challenging the order passed by the learned Single Judge in previous petition that the Tribunal had no jurisdiction and that such issue should be treated as preliminary issue and to be decided at the threshold.

For the foregoing reasons, in our opinion, there is no merit in the Letters Patent Appeal and the appeal is required to be dismissed and is hereby dismissed. No order as to costs.

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